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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 487.

NORTH COUNTIES HYDRO-ELECTRIC COMPANY,
Petitioner,

vs.

UNITED STATES OF AMERICA.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

REPLY BRIEF FOR PETITIONER.

In its response, the Government takes the position that petitioner should be denied its day in court on the ground of *res judicata* or, alternatively, on a statute of limitations plea that was not passed upon by the Court of Claims. These are precisely the technical defenses that this Court rejected in the *Portsmouth* and *Dickinson* cases as unfairly denying property owners their right to trial in cases of recurrent flooding or similar taking of property. The Government's attempt to distinguish these two decisions relies upon irrelevant detail and ignores the basic principle which governs the instant case.

Petitioner presented to the court below the facts showing a taking of its property. A Commissioner of the Court of Claims, after hearing this evidence and the Government's presentation, found that, as of 1952, a taking had in fact occurred (quoted at Petition, p. 3). If this finding is correct, the petitioner's present suit is timely and could not have been barred by a prior suit based on a claim that had not then ripened. The Government sidesteps this critical finding by stating (p. 3):

> "Since the validity of the commissioner's findings was not passed upon, we do not accept the quotations made therefrom by petitioner (Pet. 3-4) as correctly stating the ultimate facts."

The fatal defect in the Government's position is that it cannot sustain a plea of *res judicata* if the Commissioner's findings of fact are correct, and yet the Court of Claims has not passed on these findings because it granted the Government's plea of *res judicata*. The unsoundness and unfairness of the Government's circularly inconsistent position demonstrates, we submit, that this case should be remanded to the Court of Claims so that it may pass upon the Commissioner's findings instead of depriving its day in court.

Respectfully submitted,

JOHN W. DAY,
HOWARD J. TRIENENS,
Attorneys for Petitioner.

SIDLEY, AUSTIN, BURGESS & SMITH,
Of Counsel.